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JON HART

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JON HART, On Behalf of Himself and All
Others Similarly Situated, and On Behalf of
the General Public,

Plaintiff,

v.

COMCAST OF ALAMEDA, INC.;
COMCAST OF CALIFORNIA II, INC.;
COMCAST OF CALIFORNIA III, INC.;
COMCAST OF CALIFORNIA IX INC.;
COMCAST OF CALIFORNIA V INC.;
COMCAST OF CALIFORNIA VI INC.;
COMCAST OF CALIFORNIA X INC.;
COMCAST OF CALIFORNIA XIII INC.;
COMCAST CORPORATION; COMCAST
OF FRESNO, INC.; COMCAST OF MARIN
I, INC.; COMCAST OF MARIN II, INC.;
COMCAST OF NORTHERN CALIFORNIA
I, INC.; COMCAST OF NORTHERN
CALIFORNIA II, INC.; COMCAST OF
SACRAMENTO I, LLC; COMCAST OF
SACRAMENTO II, LLC; COMCAST OF
SAN LEANDRO, INC.; COMCAST OF
SIERRA VALLEYS, INC.; and DOES 1-250,

Defendants.

Case No. C-07-06350 PJH

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: April 17, 2008
Time: 2:30 p.m.
Courtroom: 3

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rule 16-9 and the Court's Order to Continue Case
3 Management Conference and Related Deadlines, entered on March 14, 2008 ("March 14
4 Order"), and in anticipation of the initial Case Management Conference on April 17,
5 2008, the parties file this joint Initial Case Management Conference Statement.

6 Pursuant to the March 14 Order, the parties address herein the following topics:
7 (1) a schedule for further briefing and hearing on defendant's Motion for Judgment on the
8 Pleadings; (2) a procedure by which the Court will determine whether and to what extent
9 plaintiff is entitled to discovery for purposes of determining any Motion to Remand; (3) a
10 date certain by which plaintiff will file any Motion to Remand; and (4) a schedule for
11 hearing any Motion to Remand.

12 **II. BACKGROUND**

13 Plaintiff John Hart ("Plaintiff") filed this putative class action in November 2007,
14 in Alameda Superior Court, claiming that Defendants (collectively "Comcast") violated
15 California law by allegedly advertising, offering, and contracting to provide their
16 California customers with high-speed Internet service and unrestricted Internet access,
17 while at the same time allegedly restricting such customers' access to certain Internet
18 applications. Plaintiff alleges that by misrepresenting the accessibility of the Internet,
19 Comcast has: (1) breached its agreements with the putative class; (2) breached the
20 covenant of good faith and fair dealing; (3) violated the false advertising provisions of the
21 California Legal Remedies Act ("CLRA"); (4) violated the California False Advertising
22 Law, Business & Professions Code §17500, *et seq.*; and (5) violated the California Unfair
23 Competition Law ("UCL"), Business and Professions Code §17200, *et seq.* A portion of
24 Plaintiff's Sixth Cause of Action for violation of the "unlawful" prong of the UCL alleges
25 that Comcast's conduct to restrict access by members of the putative class to peer-to-peer
26 file sharing applications on Comcast's network violates both state and federal law.

27 Comcast contends that the allegations of the Complaint track then-recent filings at
28 the Federal Communications Commission ("FCC") seeking agency action to restrict or to

dictate the use of particular network management practices. *See In re Free Press, et al., Petition for Declaratory Ruling*, WC Docket No. 07-72 (Nov. 1, 2007); *In re Vuze, Inc., Pet. To Establish Rules Governing Network Management Practices by Broadband Network Operators, Broadband Indus. Practices, Petition for Rulemaking*, WC Docket No. 07-52 (Nov. 14, 2007). Subsequent to these filings, the FCC issued two Public Notices seeking comment on these Petitions. *FCC Public Notice, Comment on Sought on Petition for Declaratory Ruling Regarding Internet Management Policies*, WC Docket No. 07-52 (Jan. 14, 2008); *FCC Public Notice, Comment Sought on Petition for Rulemaking to Establish Rules Governing Network Management Practices by Broadband Network Operators*, WC Docket No. 07-52 (Jan. 14, 2008). In addition, on February 25, 2008, the FCC convened a public *en banc* hearing regarding broadband network management practices. A further *en banc* hearing is scheduled for April 17, 2008 in Stanford, California.

III. CURRENT STATUS OF THE CASE

This action was removed to this Court on December 14, 2007.

On March 14, 2008, Defendants moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) on the basis that Plaintiff's claims: (1) are preempted by federal law; (2) are within the FCC's primary jurisdiction; and (3) fail as a matter of state and federal law.

IV. BRIEFING AND HEARING SCHEDULE MOTION FOR JUDGMENT ON THE PLEADINGS

The parties have negotiated and agreed upon the following schedule for Defendants' Motion for Judgment on the Pleadings, filed March 14, 2008:

- (1) Plaintiff shall file his brief in opposition to Defendants' Motion for Judgment on the Pleadings on or before May 7, 2008; and
- (2) Defendants shall file their reply brief in response to Plaintiff's opposition on or before May 28, 2008.
- (3) The parties propose that the Motion for Judgment on the Pleadings be heard

on June 18, 2008, concurrent with the hearing on any Motion to Remand.

V. JURISDICTIONAL DISCOVERY AND MOTION FOR REMAND

To determine whether this action fits within the Local Controversy and/or Home State exceptions under the Class Action Fairness Act such that remand is appropriate, Plaintiff wishes to conduct discovery on the issue of subject matter jurisdiction. Plaintiff contends that this discovery and any Motion to Remand should be resolved at the outset of this action. Although Defendants dispute the necessity of this discovery, the parties have reached an agreement as to the scope of such discovery. The parties also have agreed on the following briefing and hearing schedule.

- (1) Defendants will provide responses to certain interrogatories propounded by plaintiff by May 5, 2008;
- (2) Plaintiff shall file his Motion for Remand, if any, on or before May 16, 2008;
- (2) Defendants shall file their brief in opposition to any such Motion for Remand on or before May 28, 2008; and
- (3) Plaintiff shall file his reply brief in response to Defendants' opposition on or before June 4, 2008.
- (4) The parties propose that any such Motion for Remand be heard on June 18, 2008, concurrent with the hearing on the Motion for Judgment on the Pleadings.

VI. FURTHER CASE MANAGEMENT CONFERENCE

The parties submit that the next Case Management Conference be set, if necessary, for thirty (30) days after this Court issues a decision on Defendants' Motion for Judgment on the Pleadings or Plaintiff's Motion for Remand, if any.

At that Conference, the parties can address, as needed, additional topics contemplated by the United States District Court for the Northern District of California's Standing Order on Contents of Joint Case Management Statement.

1 Dated: April 10, 2008

Respectfully submitted,

2 DRINKER BIDDLE & REATH LLP

3 /s/ *Michael J. Stortz*

4 MICHAEL J. STORTZ

5 Attorneys for Defendants

6 COMCAST OF ALAMEDA, INC.;
7 COMCAST OF CALIFORNIA II, INC.;
8 COMCAST OF CALIFORNIA III, INC.;
9 COMCAST OF CALIFORNIA IX, INC.;
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11 COMCAST OF CALIFORNIA VI, INC.;
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14 COMCAST CORPORATION; COMCAST
15 OF FRESNO, INC.; COMCAST OF
16 MARIN I, INC.; COMCAST OF MARIN
17 II, INC.; COMCAST OF NORTHERN
18 CALIFORNIA I, INC.; COMCAST OF
19 NORTHERN CALIFORNIA II, INC.;
20 COMCAST OF SACRAMENTO I, LLC;
21 COMCAST OF SACRAMENTO II, LLC;
22 COMCAST OF SAN LEANDRO, INC.;
23 COMCAST OF SIERRA VALLEYS, INC.

16 Dated: April 10, 2008

LEXINGTON LAW GROUP, LLP

18 /s/ *Mark N. Todzo*

19 MARK N. TODZO

20 Attorneys for Plaintiff

21 JON HART